

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment and)	NOTICE OF AMENDMENT
transfer, the adoption of New Rules)	AND TRANSFER, ADOPTION,
I through IV, the repeal of existing)	REPEAL, AND TRANSFER
rules, and transfer of existing rules)	
all pertaining to outfitter licensing and)	
operations)	

TO: All Concerned Persons

1. On August 25, 2005, the Board of Outfitters (Board) published MAR Notice No. 8-39-24 regarding the public hearing on the proposed amendment and transfer, adoption, and repeal of the above-stated rules relating to outfitter licensing and operations, at page 1549 of the 2005 Montana Administrative Register, issue no. 16.

2. On September 20, 2005, a public hearing on the proposed amendment and transfer, adoption and repeal was conducted in Helena. One witness provided comments at the hearing and additional written comments were timely received.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

COMMENT 1: A number of comments were received requesting that the public comment period be extended, as outfitters are currently in their busiest time of the year.

RESPONSE 1: The Board notes that there really is no optimum time for outfitters to have rules noticed for public comment because of the varied seasons and types of outfitters. The Board has followed the statutory requirements for public notice and public participation and declines to extend the comment period. Every member of the public, including those in the outfitter industry, was provided equal opportunity to comment on the proposed rule changes.

COMMENT 2: Numerous comments were received in opposition to the proposed amendment to ARM 8.39.518 (24.171.401) at subsection (1)(f), which would require outfitters to pay a \$5,000.00 fee for services provided in any area beyond a 100-mile radius of the outfitter's base of operations.

RESPONSE 2: Due to the negative concerns raised by the commenters, the Board will not proceed with the proposed amendments to subsection (1)(f) at this time. The commenters' concerns will be placed on the Board's agenda for further review and discussion.

COMMENT 3: One commenter stated that the \$50.00 fee for net client hunter use (NCHU) transfer is reasonable as long as it is per transaction.

RESPONSE 3: The Board, in the interest of clarification, notes that the fee is charged per transaction.

COMMENT 4: Comments were received in opposition to the proposed amendment to ARM 8.39.518 (24.171.401) at subsection (1)(k), creating a new per transaction fee for outfitter transfer of NCHU.

RESPONSE 4: The Board concluded that it is reasonable to implement this new fee to address the cost to the Board of processing NCHU transfers. The Board is amending subsection (1)(k) of the rule exactly as proposed.

COMMENT 5: One commenter supported the Board's provision to waive up to 50 days of guiding experience as proposed in ARM 8.39.502 (24.171.502).

RESPONSE 5: The Board acknowledges the comment.

COMMENT 6: Regarding ARM 8.39.506 (24.171.507), one commenter supported the proposed addition of "named insured" to the rule, as it more clearly identifies the insurance requirements of licensed outfitters.

RESPONSE 6: The Board acknowledges the comment.

COMMENT 7: One commenter found the proposed language at ARM 8.39.507 (24.171.510) at subsection (1)(d), confusing and suggested the Board amend it to address independent contractors.

RESPONSE 7: The Board agreed that the proposed language was confusing and is amending the rule accordingly for better clarity.

COMMENT 8: Several commenters objected to the proposed amendments to ARM 8.39.507 (24.171.510) at subsection (1)(e), regarding the additional written report to the Board of outfitters acting as guides. The commenters stated that the requirement was impractical, unnecessary and vague.

RESPONSE 8: Due to the concerns raised by the commenters, the Board will not proceed with the proposed addition of subsection (1)(e) at this time. The commenters' concerns will be placed on the Board's agenda for further review and discussion.

COMMENT 9: A commenter questioned whether a suspended outfitter's license would be considered "valid" regarding outfitters acting as guides under ARM 8.39.515 (24.171.603). If so, the commenter suggested the Board amend the rule for clarification.

RESPONSE 9: The Board notes that a suspended license is not considered a valid license for purposes of this rule. The Board is amending the rule exactly as proposed.

COMMENT 10: A commenter suggested that the Board amend ARM 8.39.703 (24.171.801) at subsection (2)(i) to add the requirement that outfitter records include names of clients transferred from another outfitter.

RESPONSE 10: The Board acknowledges the comment and notes that the suggested addition is a substantial change from what was included in the proposed notice. To assure full opportunity for public participation and comment, the issue will be placed on the Board's agenda for further review and discussion. The Board is amending subsection (2)(i) exactly as proposed.

COMMENT 11: Several commenters objected to the proposed amendment to ARM 8.39.703 (24.171.801) at section (4), that would add the requirement that outfitters report in writing to the Board all booking agents used.

RESPONSE 11: The Board determined that there is no need to require outfitters' reporting of booking agents as the Board does not license them. The Board is amending the rule to delete proposed section (4).

COMMENT 12: One commenter suggested amending ARM 8.39.508 (24.171.2101) at section (4), to require client logs be sent to the Board 30 days after the end of a hunting season as approved under the outfitter's operation plan, instead of the January 31st submission deadline.

RESPONSE 12: The Board notes that there has been confusion as to the applicable submission requirements. The January 31 deadline was added to clarify the date by which hunting outfitters must submit their amended logs. The Board is amending the rule exactly as proposed.

COMMENT 13: One commenter questioned the feasibility of the proposed amendment to ARM 8.39.709 (24.171.2301) at subsection (1)(j), requiring outfitters to designate in writing to the Board agents used to collect the outfitter's fees.

RESPONSE 13: Due to the concerns raised by the commenter, the Board will not proceed with the proposed amendments to subsection (1)(j) at this time. The commenters' concerns will be placed on the Board's agenda for further discussion.

COMMENT 14: One commenter suggested that ARM 8.39.709 (24.171.2301) at subsection (3)(o), be amended to clarify that both the outfitter's business name and personal name must be included in an advertisement.

RESPONSE 14: The Board agreed that adding the suggested language helps to clarify the Board's intent and is amending the rule accordingly.

COMMENT 15: One commenter asked regarding New Rule II whether it is the Board's intent to charge \$100.00 for an emergency guide's license, and then another \$100.00 when the emergency guide applies for a regular guide's license.

RESPONSE 15: The Board states that the emergency guide license is only a ten-day license to get a guide in the field. An emergency guide who subsequently applies for full guide licensure will have to pay an additional \$100.00 licensing fee.

4. After consideration of the comments, the Board has amended and transferred ARM 8.39.501 (24.171.501), 8.39.502 (24.171.502), and 8.39.508 (24.171.2101) exactly as proposed.

The Board has amended and transferred ARM 8.39.503 (~~24.171.505~~, 24.171.507), 8.39.505 (~~24.171.506~~, 24.171.503), 8.39.506 (~~24.171.507~~, 24.171.509), 8.39.510 (~~24.171.511~~, 24.171.520), 8.39.515 (~~24.171.603~~, 24.171.601), 8.39.419 (~~24.171.806~~, 24.171.413), and 8.39.704 (~~24.171.802~~, 24.171.412) exactly as proposed but with the changes in numbering as shown. It was determined that these rule numbers should be modified to allow for additional expansion and the insertion of future Board rules into subchapter 4, the General Provisions subchapter. These modifications follow the overall scheme for rule transfers by allowing room for anticipated growth within the rules.

Additionally, after consideration of the comments, the Board has adopted New Rule I (24.171.602), New Rule II (24.171.604), New Rule III (24.171.702) and New Rule IV (24.171.2104) and repealed ARM 8.39.513, 8.39.514, 8.39.801, 8.39.802 and 8.39.803 exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.39.518 (24.171.401), 8.39.507 (~~24.171.510~~, 24.171.513), 8.39.703 (~~24.171.801~~, 24.171.408), and 8.39.709 (24.171.2301) with the following changes, stricken matter interlined, new matter underlined:

8.39.518 (24.171.401) FEES (1) through (1)(e) remain as proposed.

(f) Annual fee for each additional hunting 5,000
camp, ~~or area where services of a licensed~~
~~outfitter are provided~~, added after January 1, 1999
and located beyond a 100-mile radius of the
outfitter's base of operations and that is
in an ~~a Montana department of fish, wildlife, and~~
~~parks~~ administrative region other than the region
containing the outfitter's base of operations

(g) through (m) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310,
37-47-316, 37-47-317, 37-47-318, MCA

8.39.507 (24.171.513) OUTFITTER ACTING AS GUIDE

(1) through (1)(b) remain as proposed.

(c) acts as a guide only within the services and area of operation of this particular outfitter; and

(d) is reported as a guide in ~~that employer outfitter's~~ the client logs of the outfitter whose clients are being served ; and .

~~(e) submits written notification of the guide work to the board.~~

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-301, 37-47-302, 37-47-303, MCA

8.39.703 (24.171.408) OUTFITTER RECORDS (1) through (3) remain as proposed.

~~(4) Outfitters must provide in writing to the board, on a board-prescribed form, all designated booking agents used by the outfitter prior to providing services.~~

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-301, MCA

8.39.709 (24.171.2301) UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) through (1)(i) remain as proposed.

(j) personally collect, or designate an agent ~~(by written notice on a form provided by the board)~~ to collect, all fees from clients. The outfitter is solely responsible for complying with his or her ~~the outfitter's~~ deposit and deposit refund policy;

(k) through (3)(n) remain as proposed.

(o) clearly designate the business name and personal name, address, telephone number, and license number of the outfitter, when advertising outfitter and guide services. In cases where a guide owns the outfitting business, the guide must identify the endorsing and supervising outfitter in any advertisement for the business;

(p) through (s) remain as proposed.

AUTH: 37-1-319, 37-47-201, 37-47-341, MCA

IMP: 37-1-312, 37-47-341, MCA

6. The Board has transferred ARM 8.39.101, 8.39.201, 8.39.202, 8.39.418, 8.39.512, 8.39.804, and 8.39.805 as follows:

<u>OLD</u>	<u>NEW</u>	
8.39.101	24.171.101	Board Organization
8.39.201	24.171.201	Procedural Rules
8.39.202	24.171.202	Public Participation Rules
8.39.418	24.171.407	Inspection
8.39.512	24.171.512	Licensure -- Inactive License
8.39.804	24.171.701	Determination of Net Client Hunter Use and Review of New Operations Plan and Proposed

		Expansion of Net Client Hunter Use Under Existing and New Operations Plan(s)
8.39.805	24.171.402	Effect of Fee for Expansion of Net Client Hunter Use

BOARD OF OUTFITTERS
MEL MONTGOMERY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006.